STATE OF ILLINOIS)
) SS
COUNTY OF OGLE)

ORDINANCE NO. 2009-0803

AN ORDINANCE APPROVING A SPECIAL USE PERMIT
ON PROPERTY LOCATED AT 4828 W. POND ROAD, LEAF RIVER, IL

WHEREAS, Eugene E. Davis, 2614 Kristie Rd., Dothan, AL; James M. Davis, 1611 Hickory Ave., Panama City, FL; Dorothy M. Modeler, 210 N. Wesley Ave., Mt. Morris, IL; Michael R. Modeler, 1007 W. 6th St., Sterling, IL; and, Quentin H. Davis Living Trust by Quentin Davis, Trustee, 13779 W. White Oak Rd., Forreston, IL, have filed a petition for a Special Use Permit in the AG-1 Agricultural District (Petition No. 02-09SU) to allow a single-family dwelling for the son of the farm owner on property located at 4828 W. Pond Rd., Leaf River, IL in Leaf River Township and legally described as shown in Exhibit "A" attached hereto; and

WHEREAS, following due and proper notice by publication in the Ogle County Life at least fifteen (15) days prior thereto, and by mailing notice to all owners of property abutting the subject property at least fifteen (15) days prior thereto, the Ogle County Zoning Board of Appeals conducted a public hearing on July 30, 2009, at which the petitioner presented evidence, testimony, and exhibits in support of the requested the requested Special Use Permit, and one member of the public spoke against the petition; and

WHEREAS, the Zoning Board of Appeals, having considered the evidence, testimony and exhibits presented has made its findings of fact and recommended that the requested Special Use Permit be granted with conditions as set forth in the *Findings of Fact and Recommendation of the Ogle County Zoning Board of Appeals* dated July 30, 2009, a copy of which is appended hereto as Exhibit "A"; and

WHEREAS, the Planning and Zoning Committee of the Ogle County Board has reviewed the testimony and exhibits presented at the public hearing and has considered the Findings of Fact and recommendation of the Zoning Board of Appeals, and has forwarded a recommendation to the Ogle County Board that the requested Special Use Permit be granted; and

WHEREAS, the Ogle County Board has considered the findings of fact and recommendation of the Zoning Board of Appeals and the recommendation of the Planning and Zoning Committee, and has determined that granting the Special Use Permit to allow a single-family dwelling for the son of the farm owner in the AG-1 Agricultural District would be consistent with the requirements established by Section 9.08© of the *Ogle County Amendatory Zoning Ordinance*;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF OGLE COUNTY, ILLINOIS, as follows:

SECTION ONE: The report of the Ogle County Zoning Board of Appeals, Exhibit "A" attached hereto, is hereby accepted and the findings set forth therein are hereby adopted as the findings of fact and conclusions of the Ogle County Board.

SECTION TWO: Based on the findings of fact set forth above, the request of Eugene E. Davis, 2614 Kristie Rd., Dothan, AL; James M. Davis, 1611 Hickory Ave., Panama City, FL; Dorothy M. Modeler, 210 N. Wesley Ave., Mt. Morris, IL; Michael R. Modeler, 1007 W. 6th St., Sterling, IL; and, Quentin H. Davis Living Trust by Quentin Davis, Trustee, 13779 W. White Oak Rd., Forreston, IL for a Special Use Permit to allow a single-family dwelling for the son of the farm owner in the AG-1 Agricultural District on property located at 4828 W. Pond Rd., Leaf River, IL in Leaf River Township and legally described as shown in Exhibit "A" attached hereto, is hereby approved.

SECTION THREE: This Ordinance shall be in full force and effect upon its adoption by the County Board of Ogle County, Illinois and attestation by the Ogle County Clerk.

SECTION FOUR: Failure of the owners or other party in interest or a subsequent owner or other party in interest to comply with the terms of this Ordinance, after execution of such Ordinance, shall subject the owners or party in interest to the penalties set forth in Section 9.10 of the *Ogle County Amendatory Zoning Ordinance*.

PASSED BY THE COUNTY BOARD THIS 18ST DAY OF AUGUST 2009 A.D.

W. Ed Rice

W. Ed Rice, Chairman of the Ogle County Board

ATTEST:

Rebecca Huntley

Rebecca Huntley, Ogle County Clerk and
Ex Officio Clerk of the Ogle County Board

OGLE COUNTY CLERK
OGLE COUNTY, ILLINOIS

EXHIBIT "A"

LEGAL DESCRIPTION

Part of the Southwest Quarter of the Southwest Quarter of Section 26, Township 25 North, Range 9 East of the 4th Principal Meridian, Leaf River Township, Ogle County, State of Illinois

Commencing at the Southwest corner of the Southwest Quarter of the Southwest Quarter of said Section 26; thence North 88 degrees 37 minutes 31 seconds East along the south line of the Southwest Quarter of the Southwest Quarter of said Section 26, 319.93 feet to the Point of Beginning; thence North 01 degrees 22 minutes 29 seconds West perpendicular to the south line of the Southwest Quarter of the Southwest Quarter of said Section 26, 210.00 feet; thence North 88 degrees 37 minutes 31 seconds East parallel to the south line of the Southwest Quarter of the Southwest Quarter of said Section 26, 207.43 feet; thence South 01 degrees 22 minutes 29 seconds East perpendicular to the south line of the Southwest Quarter of the Southwest Quarter of said Section 26, 210.00 feet to said south line; thence South 88 degrees 37 minutes 31 seconds West along the south line of the Southwest Quarter of the Southwest Quarter of said Section 26, 207.43 feet to the Point of Beginning, containing 1.00 acres.

P.I.N.: Part of 03-26-300-002

EXHIBIT "B"

FINDINGS OF FACT AND RECOMMENDATION OF THE ZONING BOARD OF APPEALS

Ogle County Zoning Board of Appeals

911 W. Pines Road
Oregon, IL 61061
815.732.1190
Fax: 815.732.2229

FINDINGS OF FACT AND RECOMMENDATION
OF THE OGLE COUNTY ZONING BOARD OF APPEALS

This is the findings of fact and the recommendation of the Ogle County Zoning Board of Appeals concerning an application of Eugene E. Davis, 2614 Kristie Rd., Dothan, AL; James M. Davis, 1611 Hickory Ave., Panama City, FL; Dorothy M. Modeler, 210 N. Wesley Ave., Mt. Morris, IL; Michael R. Modeler, 1007 W. 6th St., Sterling, IL; and, Quentin H. Davis Living Trust by Quentin Davis, Trustee, 13779 W. White Oak Rd., Forreston, IL, in case #02-09SU. The applicants are requesting a Special Use Permit to permit dwelling for the son of the farm owner in the AG-1 Agricultural District on part of Parcel Identification No. 03-26-300-002, a 1.0 acre parcel which is part of Section 26, Township 25N, Range 9E of the 4th Principal Meridian and is located in Leaf River Township at 4828 W. Pond Road.

After due notice, as required by law, the Zoning Board of Appeals held a public hearing in this case on July 30, 2009 at the Ogle County Farm Bureau, 421 W. Pines Rd., Oregon, Illinois and hereby report their findings of fact and their recommendation as follows:

SITE INFORMATION: See Staff Report (attached herewith).

ANALYSIS OF SEVEN STANDARDS: After considering all the evidence and testimony presented at the public hearing, this Board makes the following analysis of the six standards listed in Section 9.08© (Standards for Special Use Permits) of the *Ogle County Amendatory Zoning Ordinance* that must all be found in the affirmative prior to recommending granting of the petition.

1. That the proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or the public health, safety, morals, comfort or general welfare at large. **The proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or the public health, safety, morals, comfort or general welfare at large due to the nature of the use (being a dwelling for the son of the farm owner on a site that is not farm land). STANDARD MET.**

2. That the location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to:

   a. The location, nature and height of building, structures, walls and fences on the site; and,

   b. The nature and extent of proposed landscaping and screening on the proposed site.

   The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent

development and use of neighboring property in accordance with the AG-1 zoning district regulations, as there are nine (9) other non-farm dwellings within ½ mile of the subject site. STANDARD MET.

3. That off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations. **The site is large enough so that adequate off-street parking and loading areas can be provided. STANDARD MET.**

4. That adequate utilities, ingress/egress to the site, access roads, drainage and other such necessary facilities have been or will be provided. **Adequate utilities, ingress/egress to the site from W. Pond Road, access roads, drainage and other such necessary facilities have been or will be provided. STANDARD MET.**

5. That the proposed use can be operated in a manner that is not detrimental to the permitted developments and uses in the zoning district; can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area; and is deemed essential or desirable to preserve and promote the public health, safety and general welfare of Ogle County. **The proposed use of a single-family dwelling can be operated in a manner that is not detrimental to the permitted developments and uses in the AG-1 zoning district. STANDARD MET.**

6. That the proposed special use complies with all provisions of the applicable district regulations. **The proposed special use appears to comply with all provisions of the AG-1 district regulations. STANDARD MET.**

RECOMMENDATION: After considering all the evidence and testimony presented, this Board finds that the application meets all the standards as found in Section 9.08© of the *Ogle County Amendatory Zoning Ordinance.*

Therefore, the Zoning Board of Appeals hereby recommends that a Special Use Permit be granted to allow a dwelling for the son of the farm owner in the AG-1 Agricultural District.

ROLL CALL VOTE: The roll call vote was 5 members for the motion to recommend granting, 0 opposed.

Respectfully submitted this 30th day of July 2009 by the Ogle County Zoning Board of Appeals.

Bruce McKinney, Chairman
Maurice Bronkema
Jason Sword
Randall Anderson
Curtis Freeberg

Bruce McKinney, Chairman

ATTEST:

Mark E. Miller

Michael Reibel, Secretary
By: Mark E. Miller, Acting Secretary

STATE OF ILLINOIS)
)SS
COUNTY OF OGLE)

In the Matter of the Petition
of
Eugene E. Davis, James M. Davis, Dorothy M. Modeler,
Michael R. Modeler and Quentin H. Davis Living Trust
by Quentin Davis, Trustee, Leaf River Township
Ogle County, Illinois

Testimony of Witnesses
Produced, Sworn and
Examined on this 30th day
of July 2009
before the Ogle County
Zoning Board of Appeals

Present:
Maurice Bronkema
Randall Anderson
Curtis Freeberg
Jason Sword
Bruce McKinney, Chairman
Mark Miller, Zoning Staff

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MR. McKINNEY: Next order of business?

MR. MILLER: The next order of business is to consider a request filed June 18th, 2009 of Eugene E. Davis, 2614 Kristie Road, Dothan, Alabama; James M. Davis, 1611 Hickory Avenue, Panama City, Florida; Dorothy M. Modeler, 210 N. Wesley Avenue, Mt. Morris; Michael R. Modeler, 1007 W. 6th Street, Sterling, Illinois; and Quentin H. Davis Living Trust, Quentin Davis Trustee, 13779 W. White Oak Road, Forreston, Illinois for a Special Use Permit to allow a dwelling for the son of the farm owner in AG-1 Agricultural District on property described as follows and owned by Eugene E. Davis; James M. Davis; Dorothy M. Modeler; and Michael R. Modeler; and being purchased by Quentin H. Davis Living Trust:

Part of the SW1/4 of the SW1/4 Section 26 Leaf River Township, 1.0 acre more or less. Common location being 4828 W. Pond Road.

For the record, a sign was posted along the frontage of the premises indicating that a zoning hearing is to be held regarding this property. All adjoining owners have been

notified of the hearing this evening and the specifics of the petition and a legal notice was published in the July 6th edition of the Ogle County Life notifying the public of the hearing this evening and the specifics of the petition.

Under the staff report, a copy of which is on file and the Board members have received, under general information I'll point out that the existing land use is residential -- is that correct -- the proposed 1.0-acre special use site contains a guest house accessory to an existing farm dwelling. Approximately 94 percent of the proposed special use site is in timber, dwelling and yard area. The remainder of the site is in cropland. Surrounding Land Use and Zoning: The proposed special use site is located within a predominantly agricultural area. There are several large lot residential uses within the immediate area. There are nine nonfarm dwellings within a half mile of the site. Land immediately adjacent to the proposed special use site to the north, east and west is in agricultural use and is zoned AG-1. Land immediately adjacent to the south is in a large

lot 10-acre residential use and zoned AG-1. Zoning History: None. Special Information, Public Utilities: None. Transportation: West Pond Road at the site is a gravel surfaced, Township maintained road. North Mt. Morris Road north of Illinois Route 72 is a gravel surfaced, Township maintained road. Physical Characteristics: The site is located on an upland sloping and well-drained side slope. There are no wetlands, floodplain or areas of surface water ponding on the site.

According to the Ogle County Digital Soil Survey, soil types on the site are 280C2 - Fayette silt loam; and 509C2 - Whalan loam. The soils identified on the site are classified as "Farmland of Statewide Importance". The 509C2 soil series which accounts for approximately 40 percent of the total site area is rated as being "Very Limited" for septic fields due to slow water movement and depth to bedrock. The 280C2 soil series which accounts for the remainder of the site is rated as being "Somewhat Limited" for septic fields due to slow water movement.

Under the LESA, the LESA score of 185.8

indicates a Low rating for protection. The Land Evaluation portion being 72.8 and the Site Assessment being 113.

In a letter on file from the Illinois Department of Natural Resources, that reads in part the Illinois Natural Heritage Database contains no record of state-threatened -- state-listed threatened or endangered species, Illinois Natural Area Inventory sites, dedicated Illinois nature preserves or registered land and water reserves in the vicinity of the project and the consultation is terminated.

At the July 23rd meeting of the Ogle County Regional Planning Commission, Mr. Ocken made a motion to recommend approval of Petition No. 2-09SU. The motion was seconded by Mr. Colson and the motion carried by a roll call vote of 7 to 0.

I have a letter from the Leaf River Township Planning Commission and Planning and Township Board which states they have no objection to this petition dated July 13th, 2009.

Mr. Chairman, that's all I have.

MR. McKINNEY: I'll entertain a motion to go into a public hearing.

MR. SWORD: I'll so move.

MR. ANDERSON: Second.

MR. McKINNEY: Moved and seconded to go into a public hearing. All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: Any opposed say nay. Motion passed. We're in a public hearing. Petitioners please -- whoever is going to be speaking.

MR. DAVIS: Do you want both of us or can just one represent --

MR. McKINNEY: One can represent or if she wants to also have something to add then --

QUENTIN H. DAVIS,

being first duly sworn, testified as follows:

MR. McKINNEY: Give Julie your name and address.

MR. DAVIS: Quentin H. Davis. First name is Q-U-E-N-T-I-N. Last name D-A-V-I-S. It's 13779 West White Oak Road, Forreston, Illinois.

MR. McKINNEY: Tell us about your petition.

MR. DAVIS: Well, I'm purchasing the 62-acre farm and we'd like to track off 1 acre that's got an existing log cabin or home to have as a separate residence. My son would be purchasing that and he qualifies under the new stimulus package to be a first-time home buyer, so he'd benefit from that. Basically the farm was bought by our great, great grandfather about 1880 I think and it's been in -- my grandfather and it would be Dorothy's dad were brothers and so her side of the family had that farm since then and her brother, Eugene, lives in Dothan, Alabama and grew up on the farm and enjoys coming up once in a while and thought he wanted to kind of come up here in the summertime and enjoy the land and then go back south where we like to go in the wintertime too, but his family situation changed a little bit and his health situation changed and he decided he's not going to be able to come up and use the building that he had built there. It was built as a guest house accessory to the farm buildings and like I

say, with us purchasing we'll just -- our situation would be to track that off as a separate parcel and our son would purchase that and I'll have the rest of the surrounding land.

MR. McKINNEY: I believe you said at the Planning Commission your son is not married?

MR. DAVIS: That's correct, he's single.

MR. McKINNEY: What the square footage of that house?

MR. DAVIS: I think it shows on the plan it's 527, but you know, it's got a kitchen, it's got a bathroom, it's got a bedroom and a living area. It's just -- it's small. It was built as a weekender cabin kind of thing, but I think a single man can use it well. It's got a full porch on the front side and a small porch on the back.

MR. McKINNEY: I love it. I wish I had something like that out on a lake. I guess my biggest concern is your son is going to live there, get married, the wife wants a little bit bigger house or a kid will come along and they have to get a bigger house and then, you know --

MR. DAVIS: Well, we've talked to the log

home company and it certainly can be added on to. We've confirmed with them that there's the ability to add to it, so it probably would have to be increased in size ultimately to use it for anything other than just a weekender kind of cabin.

MR. McKINNEY: Yeah.

MR. BRONKEMA: Have you got enough area to expand -- enough acreage?

MR. DAVIS: Yeah, there's clearance to the west and north and east and south all the way really, there's -- there's --

MR. BRONKEMA: Without getting into the septic tank one way.

MR. SWORD: Where's the septic field at?

MR. DAVIS: It's to the north in the clearing once you get -- break out of the trees there that little bit of -- or corner that -- I don't know if the boundary actually shows on yours -- yeah, yeah, back in there is where the septic is.

MR. FREEBERG: Is there ever any livestock in that land behind it?

MR. DAVIS: Not for many years. When they

farmed it they had some dairy cattle there, but probably for the last -- yeah, a long time there's not been any livestock.

MR. McKINNEY: Now, do you farm this land?

MR. DAVIS: I own some farmland in Forreston also where my residence is. I cash rent that and initially I would probably cash rent this, but I wouldn't say that I would never farm it because I grew up on a farm, my son grew up on a farm, we've raised livestock, but we don't intend to have any there.

MR. FREEBERG: You say you grew up on a farm, but you're not actively farming?

MR. DAVIS: Not actively farming. I grew up actually on the other side of Leaf River on a hundred and eighty acres. I raised livestock and put myself through college. I still have a love for the land. Once you get started it's hard to not continue to have that.

MR. FREEBERG: My problem with this and I have a problem with this whole section of the Zoning Ordinance, but we got to enforce it the way it is, but on one hand we say even if you go to R-2 you got to have 2 acres to set a parcel

aside for a residence and then we kind of backdoor it through these things that if somebody, even though they're not a farmer, somebody from Chicago can come out here and buy 40, 60 acres and all the sudden that makes them a farmer and they can build a house for their kid or some kid that doesn't have access -- let's say he didn't win the genetic lottery that grew up right down the road in Leaf River or Mt. Morris could not come out and do the same thing, but that's -- that's the way the Zoning Ordinance is written and my impression -- I don't know. I ask these guys -- I know there's a definition in there for a farm, anything over 40 acres, but what's the definition of a farmer? We talk about a place for the son of farmers and what was the intent? Does that go way back in the horse days when a kid wants to help the dad out farming and so, oh, you can't live in town and ride the horse all the way out there so you're going to let them build a building for him out there -- or where does all this come from?

MR. McKINNEY: That's something we can't

really settle tonight. We have to look at the zoning laws as they're written right now.

MR. DAVIS: Well, I would say that actually when I sat down with Mike Reibel initially I said -- you know, he said there's a couple ways to do this and I said, well, let's do it the easiest, simplest and least complicated way. One other criteria is just that it's a wooded site also qualifies for that same paragraph of being able to track it off and he said let's put it down -- because your son is going to live there let's put it down under that one, but it seems like it qualifies under two criteria. That one and the fact that there were five criteria listed and one of them if it's a primarily wooded property, so for what that's worth I just -- I know when I sat down with Mike he said, yeah, let's just put this one down.

MR. FREEBERG: I'm not saying that happened in this situation, but somebody could go through this process and more or less game the system, come out here -- and I'm not saying you did that or anybody else, but they come out

here and buy 40 acres or 60 acres and then they say I want to have a guesthouse in 2008 and in 2009 they say, whoops, I changed my mind, I want to knock off an acre of that and make it into a residence under the -- yeah, there's several things it qualifies under and so we end up -- we talked about spot zoning and so we end up with 1-acre lot out in the country with private sewer and water and under our ordinary zoning maps, like I said, an R-2 would require 2 acres, so we kind of get backed into something that just if a normal person came along wouldn't be allowed.

MR. DAVIS: Like I say, I just -- I sat down with Mike and said what can we do here and this was kind of the way we put it together and I can certainly assure you I'm not coming out here from Chicago. I was born and raised in Ogle County, grew up in Leaf River.

MR. FREEBERG: I know, but I'm just making a point the same thing could happen. It says here as far as the guesthouse, the guesthouse may not be separated from the zoning lot on which it is constructed unless all resulting lots, parcels or zoning lots meet the minimum

lot size with the -- required for the zoning district, so ordinarily, you know, if somebody wanted to make this -- a residence out of this it wouldn't be allowed, but because of the other thing because you own 40 acres and that makes you a farmer your son can do it, so --

MR. McKINNEY: Does your son have any plans in the future -- you know, you said you cash rented this. Would he have any interest in the future of farming this land?

MR. DAVIS: He could. You know, I mean, we've got -- I've got -- actually I've got three tractors now. I've got the Ford Ferguson that my grandfather bought back in 1954 and two other tractors at my place and I -- you know, I do fencing and things. I've got eight cattle on my place in the pasture, but -- but as far as crop farming I'm not doing that right now. Whether he could or would, it's possible, but I can't -- you know, I'm not going to promise that.

MR. McKINNEY: Does anybody else have any questions?

MR. SWORD: No.

MR. ANDERSON: No.

MR. McKINNEY: Thank you. I believe there's nobody -- no letter of appearance filed. Is there anybody here that wishes to testify in favor of this petition? Anybody that wishes to testify opposing this petition?

NEITA WEBSTER,

being first duly sworn, testified as follows:

MS. WEBSTER: Neita Webster, N-E-I-T-A W-E-B-S-T-E-R, 4655 West Pond Road, Leaf River. And I don't exactly oppose this, but I have some questions as Mr. Freeberg does, that this is -- it's a potential to be a backdoor way into having little 1-acre bits of residential properties. I live right across the road from this -- and I lost my train of thought. I understand that this property qualifies for a special use permit on a couple counts. One is the property is wooded? Yes, it is. And one is a relative of the farmer and as I understand this was probably designed to have a child come in and help a parent farm. I don't think this is the farmer in the sense of Ogle County farmers. It's not somebody who's living on the land, farming the land and I'm just concerned

that this is -- it's a potential for having little 1-acre parcels.

MR. ANDERSON: How many acres do you own?

MS. WEBSTER: I'm sorry?

MR. ANDERSON: How many acres do you own?

MS. WEBSTER: Five.

MR. ANDERSON: Okay.

MR. FREEBERG: If -- I kind of know where you're coming from. It bothers me because, like he said, if his son gets married and decides to move it's going to be a nice little parcel for somebody that can't afford something bigger to come out in the country and --

MS. WEBSTER: Yeah, I'm not saying that Mr. Davis or his son has any intention of doing that, but I think the potential is there and perhaps the zoning requirements or the special use permits, perhaps that needs to be looked at, but the potential is there for little bits --

MR. FREEBERG: Would you feel better if they increased the size of the thing to 3 acres and called it an R-2 so there was a parcel of land over there to go with the house?

MS. WEBSTER: Probably would, yeah, 3

acres would -- would feel a little better than 1, because -- and it is, it's a cute little place and for one single man it's probably fine, but for a couple, for a family you would have to do I think something and it's my understanding this is going to stay zoned R-1 but the door is going to be open.

MR. FREEBERG: Actually it's going to stay AG-1, isn't it?

MS. WEBSTER: I'm sorry, I misspoke. AG-1.

MR. BRONKEMA: If you increase it to 3 or 5 acres it would make it that much more.

MR. McKINNEY: But I believe that if Mr. Davis' son moves out and that becomes available and they want to sell this off they can't sell it as it is because it's a special use. They would have to sell it off as either ag or residential, therefore they -- that person would have to come in and purchase more land to be able to qualify for residential.

MR. FREEBERG: I don't know about that. Once we establish that as a tax parcel by itself that -- I don't know what the requirements would

be. Marcia is back there shaking her head. I don't know.

MR. MILLER: It would be recorded. Once it was recorded it would be conveyable as a parcel.

MR. McKINNEY: All right. I stand corrected.

MS. WEBSTER: So I'm sorry, can I -- so it wouldn't have to be -- if Mr. Davis' son moved out it would not have to be rezoned?

MR. MILLER: Correct. It applied -- or if more than one of those five criteria was met he could have applied as being over 50 percent not tillable and if that were in either case approved the 1 acre could be recorded and conveyable, sold to someone else.

MS. WEBSTER: Because that wasn't our understanding at the township level when we went to the meeting. They said it would have to be rezoned, so apparently that wasn't correct.

MR. FREEBERG: So you're saying it's your understanding if the son sells it a family or three or four could come out there and buy that house and move in?

MR. McKINNEY: I don't think a family of three or four would move into that house.

MS. WEBSTER: But it's possible.

MR. McKINNEY: The Beverly Hillbillies.

MR. FREEBERG: Or immigrants.

MS. WEBSTER: I guess that's exactly my concern, we've opened the door. That's my concern that if it doesn't have to be then rezoned R-1 -- if it doesn't -- if it doesn't have to go from Ag to R-1 then we have opened the door then and I have a bigger problem with it.

MR. FREEBERG: I don't know for sure, but I know we have all kinds of residences on AG-1 land that were built through special use permits that are sold and -- bought and sold and traded on a regular basis, so I don't know.

MR. BRONKEMA: Did you mention how the township voted on this or -- if you did, I missed it.

MR. MILLER: They had no objection.

MS. WEBSTER: But there was also a discussion they were under the impression that it would have to be -- if Mr. Davis' son would

sell it it would have to go from AG-1 to some kind of residential, that it would have to be rezoned.

MR. DAVIS: I don't think you were at the township meeting. At the township they did not --

MS. WEBSTER: The Planning Commission, yes, I'm sorry, because we didn't know about the meeting last week.

MR. ANDERSON: I was under that they're saying that all special use or variances attached to the property code and not to the existing land owner, so just what Mark was talking about, so --

MR. FREEBERG: The thing is that special use --

MR. ANDERSON: Well, under the existing -- what we have in place is what it is. I mean, we're not going to deliberate what should be or what could be, but that's not what's in place today and that's not what we're talking about, what they get or what they don't get done, so --

MS. WEBSTER: Right, I understand that and that's why I -- initially I said I didn't come

to object, I just have a concern that we're opening the door.

MR. McKINNEY: Thank you.

MR. FREEBERG: Under the special use for that single family it says at least one, so you only to have one of the following criteria must be met to issue a special use permit and it qualifies under one and it qualifies under 2 that it's tree covered and then the fourth one is it's going to be occupied by a son. Nothing says it has to be sold to another son because it would still qualify to be what it is at least under No. 2 as long as they don't knock down all the trees, so in my view I think it's unfortunate, but because of the way the zoning ordinance is written what they're doing is probably under the ordinance, but I don't like it.

MR. McKINNEY: Is there anybody else here that wishes to testify opposing the petition?

MR. DAVIS: Do I get a chance to re --

MR. McKINNEY: Yeah, just a second. Seeing none, Mr. Davis, would you like to refute and do a closing statement?

MR. DAVIS: Well, I just go back to the fact that when I approached Mike Reibel I said I just want to -- you know, we're not trying to pull a fast one here. We're just buying property and it makes sense for my son to move into that dwelling because he is single and the size works for him. So when I approached Mike I just said, you know, what's the simplest and easiest way to do this. It sounds like it meets the criteria. Maybe you don't like some of the criteria that the ordinance reads, but I guess my request would be that you follow the rules of the requirement and again, we're not trying to do something fast here. It just fits into our situation and I thought that's what we're doing is what Mike thought was the best way to do it, so thank you.

MR. McKINNEY: With that, I'll entertain a motion to go back into open session.

MR. BRONKEMA: So moved.

MR. SWORD: Second.

MR. McKINNEY: It's been moved and seconded to go back into open session. All those in favor signify by saying aye.

(All those simultaneously responded.)

MR. McKINNEY: Any opposed say nay. Motion passed. We're back into open session and we'll go through our finding of facts.

MR. MILLER: No. 1) That the proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is located or the public health, safety, morals, comfort or general welfare at large.

MR. SWORD: The proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or the public health, safety, morals, comfort or other general welfare at large due to the nature of the use which is being a dwelling for the son of a farm owner on the site that is not farmland. I feel that standard is met.

MR. McKINNEY: Agree.

MR. BRONKEMA: Agree.

MR. ANDERSON: Agree.

MR. MILLER: No. 2) That the location and

size of the special use, the nature and intensity of the operation involved in or conducted in connection with and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and the use of neighboring properties in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood consideration will be given to A) the location and height of buildings, structure, walls and fences on the site and B) the nature and extent of proposed landscaping and screening on the site.

MR. ANDERSON: The location and size of the special use, the nature and the intensity of the operation involved in or conducted in connection with it and location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the AG-1 Zoning District

regulations as there are nine other nonfarm dwellings within a half a mile of the subject site. I agree that standard is met.

(All those agreed.)

MR. MILLER: No. 3) That off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations.

MR. BRONKEMA: The site is large enough so that adequate off-street parking and loading areas can be provided. Standard is met.

(All those agreed.)

MR. MILLER: No. 4) That adequate utilities, ingress/egress to the site, access roads, drainage and other necessary facilities have been or will be provided.

MR. BRONKEMA: Adequate utilities, ingress/egress on the site from West Pond Road and access roads, drainage and other necessary facilities have been and are provided for the area. It's all in place. Standard is met.

(All those agreed.)

MR. MILLER: No. 5) That the proposed use can be operated in a manner that is not

detrimental to the permitted developments and uses in the zoning district, can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area and is deemed essential or desirable to preserve and promote the public health, safety and general welfare of Ogle County.

MR. SWORD: The proposed use of a single-family dwelling can be operated in a manner that is not detrimental to the permitted developments and uses in the AG-1 Zoning District. I feel that standard is met.

(All those agreed.)

MR. FREEBERG: I agree. The operative words "can be".

MR. MILLER: And No. 6) That the proposed special use complies with all provisions of the applicable district regulations.

MR. BRONKEMA: Well, the proposed special use appears to comply with all the provisions of the AG-1 District regulations. Standard met.

(All those agreed.)

MR. McKINNEY: Going through the six

standards we've -- the Board feels that all standards have been met. With that, I'll entertain a motion.

MR. BRONKEMA: I'll make a motion that we grant the special use permit to Applicant 2-09SU with all the provisions being met.

MR. McKINNEY: Is there a second?

MR. FREEBERG: I'll second that.

MR. McKINNEY: Maury has moved, Curt has seconded to recommend approval to the County Board of No. 02-09 Special Use. Roll call.

MR. MILLER: Anderson?

MR. ANDERSON: Yes.

MR. MILLER: Bronkema?

MR. BRONKEMA: Yes.

MR. MILLER: Sword?

MR. SWORD: Yes.

MR. MILLER: Freeberg?

MR. FREEBERG: Yes.

MR. MILLER: McKinney?

MR. McKINNEY: Yes.

(By voice vote five ayes.)

MR. MILLER: Five approved.

MR. McKINNEY: Motion passed.

MR. MILLER: And this will go to the Planning Assessment and Zoning Committee meeting August 12th at 1 p.m. at the sheriff's department and then the County Board final Tuesday, August 18th at 5:30 p.m. and you're welcome to attend.

Now on this 30th day of July 2009, I do signify that the foregoing testimony was given before the Ogle County Zoning Board of Appeals.

Bruce McKinney, Chairman

Michael Reibel,
Zoning Administrator

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